

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 FEB -2 PM 4:43

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

February 2, 2009

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2007-1442-UCR; Consideration of a request for a Commission order approving a contract designating water service areas between the City of Lufkin (Lufkin), Certificate of Convenience and Necessity (CCN) No. 10355, and Angelina Water Supply Corporation (Angelina WSC), CCN No. 13059.

Dear Ms. Castañuela:

Transmitted herewith for filing with the Texas Commission on Environmental Quality (Commission or TCEQ) are the following items to be filed as backup materials for the February 11, 2009 agenda on a request for an order approving a contract designating water service areas between the City of Lufkin and Angelina WSC:

1. Proposed Order;
2. Agenda Executive Summary;
3. Caption
4. Staff memo detailing financial, managerial, and technical capabilities of Lufkin and Angelina WSC to provide continuous and adequate service to the affected area;
5. Texas Water Code, Section 13.248 agreement between Lufkin and Angelina WSC and Request for Commission order approving a Texas Water Code Section 13.248 agreement, filed jointly by Lufkin and Angelina WSC on July 19, 2006 (the letter of this date from KSA Engineers performs the functions of the agreement itself and the request for its approval);
6. Amended Map of the service area subject to the 13.248 agreement; and
7. Notices Mailed to Parties.

Please do not hesitate to contact me at (512) 239-1088 if you have any questions regarding this material. Thank you for your attention to this matter.

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
February 2, 2009
Page 2

Respectfully submitted,

A handwritten signature in cursive script that reads "Shana L. Horton".

Shana L. Horton, Staff Attorney
Environmental Law Division

Enclosures

cc: Mr. Alan Draper, P.E., Project Manager, KSA Engineers, Inc.
Mr. Keith Wright, P.E., City Engineer, City of Lufkin
Mr. Keith Weathers, Manager, Angelina WSC

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER approving an agreement designating service areas between the City of Lufkin and Angelina Water Supply Corporation pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2007-1442-UCR.

A request for a Commission order approving a contract designating service areas between the City of Lufkin (Lufkin) Certificate of Convenience and Necessity (CCN) No. 10355, and Angelina Water Supply Corporation (Angelina WSC), CCN No. 10359, in Angelina County, Texas, was presented to the Texas Commission on Environmental Quality ("Commission") for approval pursuant to Section 13.248 of the Texas Water Code and Title 30, Section 291.117 of the Texas Administrative Code.

On July 19, 2006, the City of Lufkin and Angelina WSC filed with the TCEQ an agreement (the "Agreement") regarding their respective water service areas. The Agreement addresses the transfer of Angelina WSC's authority to provide water service to approximately 101.9 acres and provides that City of Lufkin will be the sole provider of retail water service in that service area. The Agreement also addresses the transfer of the City of Lufkin's authority to provide water service to approximately 40.3 acres and provides that Angelina WSC will be the sole provider of retail water service in that service area. There are no customers in the area to be transferred. The Agreement is attached to this Order.

Contracts between retail public utilities that designate areas to be served and customers to be served by those retail public utilities, when approved by the Commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity. TEXAS WATER CODE §13.248.

The Commission held a hearing on the request at the February 11, 2009 agenda and found the request had merit.

The City of Lufkin and Angelina WSC are capable of rendering continuous and adequate water service to every customer in the areas covered by the Agreement. The transfer of portions of service area between the City of Lufkin and Angelina WSC is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

The Agreement addressing the transfer of portions of service area between City of Lufkin's CCN No. 10355 and Angelina WSC's CCN No. 10359 and designating by whom retail water service shall be provided in those areas, is hereby approved.

CCN No. 10355 in Angelina County, held by City of Lufkin, is hereby amended in accordance with the Agreement.

CCN No. 10359 in Angelina County, held by Angelina WSC, Inc., is hereby amended in accordance with the Agreement.

The Executive Director is directed to redraw the maps of the respective CCNs as provided in the Agreement and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Angelina County, Texas. The certificate amendments requested in this application are necessary for the service, accommodation, convenience, and safety of the public.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Buddy Garcia, Chairman

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

2009 FEB -2 PM 4: 43

CHIEF CLERKS OFFICE

TO: Texas Commission on Environmental Quality **DATE:** February 2, 2009

THRU: LaDonna Castañuela, Chief Clerk

FROM: Shana Horton, Staff Attorney, Environmental Law Division

SUBJECT: **TCEQ Docket No. 2007-1442-UCR.** Consideration of a request for a Commission order approving a contract designating service areas between the City of Lufkin and Angelina Water Supply Corporation

DESCRIPTION OF APPLICATION

Applicant: City of Lufkin

Regulated Activity: Retail water utility service

Type of Application: Request for a Commission Order approving a contract

Commission Action: Hearing regarding approval of the contract

Authority: Texas Water Code § 13.248 and 30 Texas Administrative Code § 291.117

FACTUAL BACKGROUND

The City of Lufkin (Lufkin), water Certificate of Convenience and Necessity (CCN) No. 10355, and Angelina Water Supply Corporation (Angelina WSC), water CCN No. 10359, provide retail water service in Angelina County, Texas. The City of Lufkin and Angelina WSC entered into an agreement regarding their respective water service areas pursuant to section 13.248 of the Texas Water Code.

Under the agreement, Lufkin will transfer approximately 40.3 acres of its CCN area to Angelina WSC and Angelina WSC will transfer approximately 101.9 acres of its CCN area to Lufkin. There are no customers or facilities in the area being transferred.

LEGAL AUTHORITY

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the

public without first obtaining a CCN.¹ Conversely, a municipality is not required to obtain a CCN to provide retail water service.² However, a municipality may not provide service to areas that are outside of its corporate boundaries but within the CCN of another retail public utility without first obtaining written consent from that retail public utility.³

The Texas Water Code and TCEQ rules allow retail public utilities to enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs.⁴ A transfer of a water or sewer system that also includes the transfer of customers and/or facilities may, in some cases, also require separate Commission approval for the transfer of customers and/or facilities.⁵

The request to approve a 13.248 agreement is not subject to the notice provisions of section 291.106, Title 30 of the Texas Administrative Code, which apply to applications for new and amended CCNs. The Commission may approve the service area agreement pursuant to section 13.248 of the Texas Water Code with the appropriate notice under the Open Meetings Act. The Executive Director will mail notice of the hearing upon the setting of an Agenda date.

BASIS FOR STAFF RECOMMENDATION

The following items were considered in developing the staff's recommendation:

1. Request for a Commission order approving the 13.248 agreement filed by City of Lufkin on July 19, 2006 (Application No. 35426-C);
2. Agreement between the City of Lufkin and Angelina WSC;
3. Map of the service area subject to the 13.248 agreement submitted by City of Lufkin and Angelina WSC;

¹ TEX. WATER CODE ANN. § 13.242(a) (Vernon 2006).

² A municipality is a "retail public utility" under section 13.002(19) of the Texas Water Code but is not a "utility" under section 13.002(23). Therefore, the section 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

³ *Id.* § 13.242(b).

⁴ *Id.* § 13.248; 30 TEX. ADMIN. CODE § 291.117 (West 2005) (Tex. Comm'n on Env'tl. Quality, Contracts Valid and Enforceable). Section 13.248 states "[c]ontracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity."

⁵ TEX. WATER CODE § 13.301. The section requires that some applicants also demonstrate "adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person" for the separate transaction relating to the transfer of facilities and/or customers.

4. Financial, Managerial, and Technical analysis of City of Lufkin to operate in the affected area; and
5. Financial, Managerial, and Technical analysis of Angelina WSC to operate in the affected area.

STAFF RECOMMENDATION

Based on the facts stated in the application and the supporting documentation submitted by the City of Lufkin and Angelina WSC, the Executive Director's staff supports the request for a Commission order approving a contract designating service areas between the City of Lufkin and Angelina WSC. Staff has confirmed that both parties are retail public utilities with active water CCNs and that the area the parties are seeking to transfer is either dually certificated to both parties or abuts the CCN of the entity receiving the CCN. Further, staff is satisfied that the City of Lufkin and Angelina WSC possess the adequate financial, managerial, and technical capability to provide continuous and adequate service to the area being transferred to each, respectively.

STAFF CONTACTS

Shana Horton, Environmental Law Division (239-1088)
Lisa Fuentes, Water Supply Division (239-6117)

CAPTION
CITY OF LUFKIN
Application No. 35426-C

TCEQ Docket No. 2007-1442-UCR. Consideration of a request for a Commission order approving an agreement designating service areas between the City of Lufkin (Lufkin), water Certificate of Convenience and Necessity (CCN) No. 10355, and Angelina Water Supply Corporation (Angelina WSC) water CCN No. 13059, in Angelina County, Texas pursuant to section 13.248 of the Texas Water Code. Currently, each party holds a CCN that includes some of the area that is the subject of the agreement. Under the agreement, Lufkin will transfer a portion of its CCN to Angelina WSC and Angelina WSC will transfer a portion of its CCN area to Lufkin. By exchanging portions of the parties' respective CCN areas, the new boundary between the areas would follow existing lines of development and remove unnecessary overlaps in CCN areas. The agreement does not affect existing customers and does not propose to transfer any facilities. (Shana Horton, Lisa Fuentes)

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Environmental Law Division **Date:** December 13, 2007
Thru: Lisa Fuentes/Tammy Benter
From: Dan Smith
Subject: Contract Service Agreement Pursuant to Texas Water Code, Section 13.248, from the City of Lufkin, Certificate of Convenience and Necessity (CCN) No. 10355, to Transfer a Portion of CCN No. 10359 from Angelina Water Supply Corporation (WSC) and to Transfer a Portion of CCN No. 10355 from the City of Lufkin to Angelina WSC, in Angelina County; Application No. 35426-C

CN: 600649115 (City of Lufkin) & 600639975 (Angelina WSC);

RN: 102681681 (City of Lufkin) & 101194132 (Angelina WSC)

In my opinion, the City of Lufkin and Angelina WSC have demonstrated adequate financial, managerial and technical capability to provide service to the areas contracted for exchange.

Signed: Dan Smith Date: December 13, 2007

I have reviewed unqualified opinion audits for both the City of Lufkin's fiscal year ended September 30, 2005, and for Angelina WSC's fiscal year ended December 31, 2005, which were submitted as current when this small contracted exchange of CCN area was originally presented to us. Lufkin's balance sheet shows total assets of \$115.6 mil. in all funds, and \$58.5 mil. in the water and sewer fund. The water/sewer cash was \$3.2 mil. with another \$1.5 mil. in restricted cash. Water/sewer term debt was \$10.5 mil. against net assets (equity) of \$45.7 mil. for a debt-to-equity ratio of .23:1. The water/sewer revenue statement showed \$1.6 mil. income before contributions and transfers, after covering depreciation of \$1.6 mil. and interest expense of \$520,662. So total cash available for debt service was \$3.7 mil., with the debt service requirement being \$1.4 mil. for a debt service coverage ratio of 2.57:1 Lufkin provides water

service to more than 13,000 connections and another 400+ through wholesale treated water agreements. Their system is rated superior.

Angelina's balance sheet shows total assets of \$3.7 mil., long-term liabilities of \$1.8 mil., and net assets (equity) of \$1.5 mil. for a debt-to-equity ratio of 1.18:1. That ratio is acceptable because the majority of the term debt is to the Texas Water Development Board with rates of 2.7% to 5.8% with a final maturity of 2034, and cash flow is more than adequate to service the debt as indicated below. The statement of activities (profit and loss statement) shows change in net assets (net income) of \$107,546 after covering depreciation of \$102,734 and interest expense of \$83,004. So cash available for debt service was \$293,284 and the debt service requirement was \$136,720 for a coverage ratio of 2.15:1. They provide service to about 1200 connections.

Neither system has recent enforcement activity (Lufkin in 1998).

This information supports a finding of adequate capability to provide service to the small amounts of land being exchanged between the two entities. In fact, it would not have been considered a material addition (more than 10%) to either entity's CCN area and would not have received a review of financial and managerial capability in a routine STM application procedure.

107 W. Lufkin Avenue, Suite 200
P.O. Box 151508
Lufkin, Texas 75915-1508
T 936.637.6061 F 936.637.6239 www.ksaeng.com



June 19, 2006

Mrs. Elizabeth Flores
Texas Commission of Environmental Quality
Utilities Financial Review Team
MC-153
P.O. Box 13087
Austin, TX 78711-3087

10355 *400649115* *102681681* *666629976* *10194132* *10359*

RECEIVED
JUL 19 2006
A-697-6
UTILITIES & DISTRICTS
SECTION

Re: **City of Lufkin and Angelina Water Supply Corporation
CCN Boundary Adjustment**

Dear Mrs. Flores

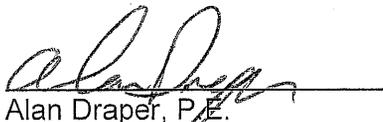
The City of Lufkin and Angelina Water Supply Corporation share a common CCN boundary have previously designated areas to be served along a common CCN boundary east of the City of Lufkin. The current CCN boundary as mapped by TCEQ does not follow developed property lines and in some instances allows a single property to be served by either water supply. Through negotiation, the City of Lufkin and Angelina Water Supply Corporation have agreed to serve the boundary delineated on the attached large and small scale maps. Current customers and existing water supply infrastructure will not be affected by the boundary adjustments. In effect, the City of Lufkin and Angelina Water Supply has exchange CCN area only.

The City of Lufkin and Angelina Water Supply Corporation request that the boundary modifications be incorporated into their respective certificates of convenience and necessity as allowed by Section 13.248 of the Texas Statutes Water Code.

If you have any questions, please call.

Very truly yours,

KSA Engineers, Inc.


Alan Draper, P.E.
Project Manager

cc: Mr. Keith Wright, P.E., City of Lufkin
Mr. Keith Weathers, Angelina W.S.C.

RECEIVED
JUL 17 2006
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

Received
Eng 6/21/06

We, the City of Lufkin and Angelina Water Supply Corporation, agree to adjust a common Certificate of Convenience and Necessity boundary to follow current property lines as delineated by the attached service map and hereby request that TCEQ modify the City of Lufkin and Angelina Water Supply Corporation CCN under Section 13.248 of the Texas Statutes Water Code to reflect the boundary changes.

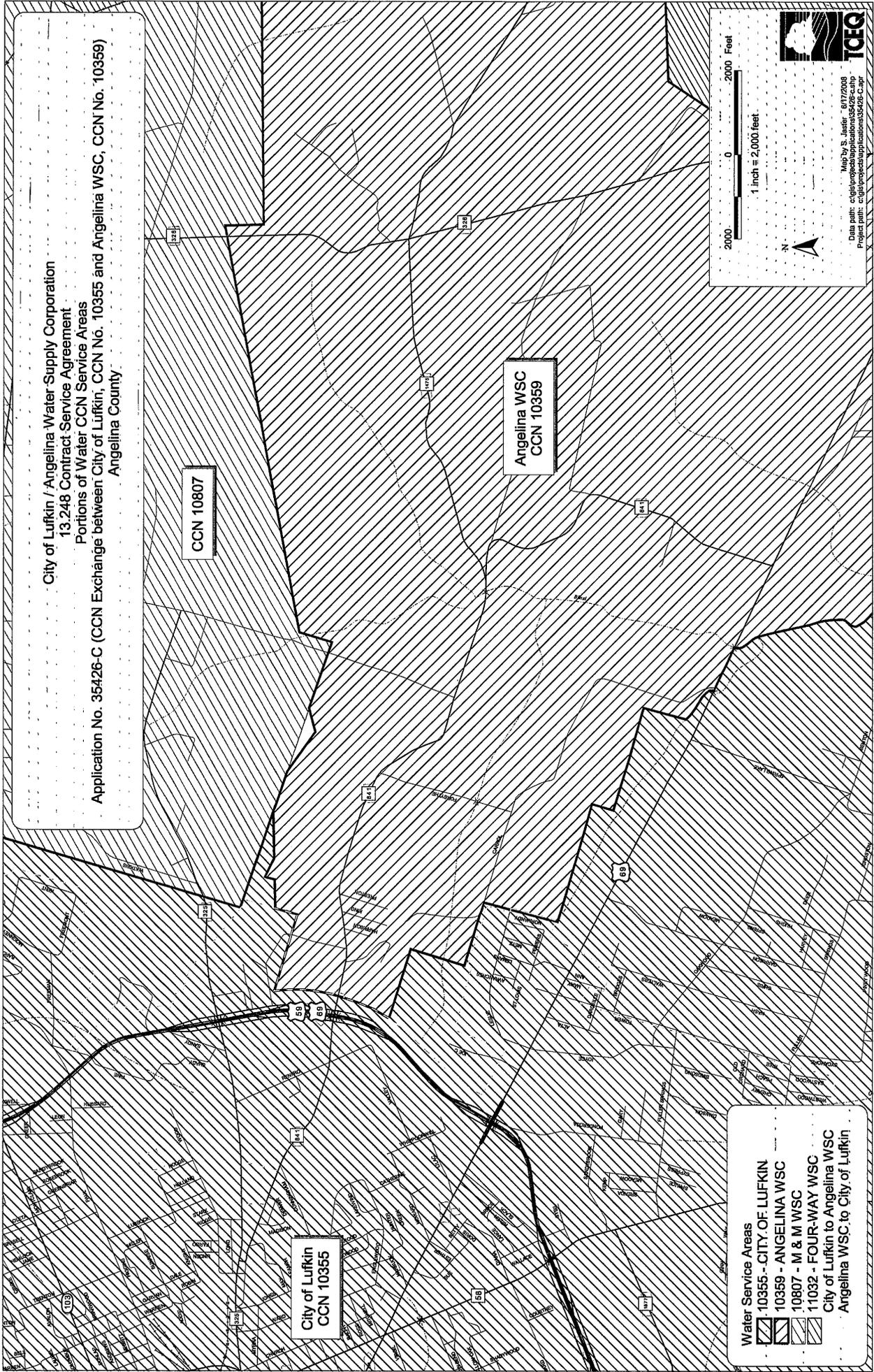


Mr. Keith Wright, P.E.
City Engineer
City of Lufkin



Mr. Keith Weathers
Manager
Angelina W.S.C.

City of Lufkin / Angelina Water Supply Corporation
 13,248 Contract Service Agreement
 Portions of Water CCN Service Areas
 Application No. 35426-C (CCN Exchange between City of Lufkin, CCN No. 10355 and Angelina WSC, CCN No. 10359)
 Angelina County



2000 0 2000 Feet
 1 inch = 2,000 feet

Map by S. Jester 6/17/2008
 Data path: c:\g:\projects\applications\35426-c\chip
 Project path: c:\g:\projects\applications\35426-c\chip

City of Lufkin
 CCN 10355

Angelina WSC
 CCN 10359

Water Service Areas

- 10355 - CITY OF LUFKIN
- 10359 - ANGELINA WSC
- 10807 - M & M WSC
- 11032 - FOUR-WAY WSC

City of Lufkin to Angelina WSC
 Angelina WSC to City of Lufkin

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 2, 2009

Alan Draper, P.E.
KSA Engineers, Inc.
P.O. Box 151508
Lufkin, Texas 75915-1508
Via Fax: 936-637-6239

Keith Wright, P.E.
City Engineer, City of Lufkin
P.O. Drawer 190
Lufkin, Texas 75901
Via Fax: 936-633-0381

Keith Weathers
Manager, Angelina Water
Supply Corp.
5978 FM 841
Lufkin, Texas 75901

Re: TCEQ Docket No. 2007-1442-UCR; Consideration of a request for a Commission order approving a contract designating water service areas between the City of Lufkin (Lufkin), Certificate of Convenience and Necessity (CCN) No. 10355, and Angelina Water Supply Corporation (Angelina WSC), CCN No. 13059.

Dear Mr. Draper, Mr. Wright, and Mr. Weathers:

This letter is to inform you that the above referenced application has been set on the February 11, 2009 Agenda for consideration by the Texas Commission on Environmental Quality (TCEQ). Please see the attached notice. Also included are the Agenda back-up materials to be considered by the Commission.

Please feel free to call me at 512-239-1088 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Shana L. Horton".

Shana L. Horton, Staff Attorney
Environmental Law Division

NOTICE OF AGENDA

TCEQ Docket No. 2007-1442-UCR.

APPLICATION: TCEQ Docket No. 2007-1442-UCR. Consideration of a request for a Commission order approving a contract designating service areas between the City of Lufkin (Lufkin) and Angelina Water Supply Corporation (Angelina WSC). The TCEQ will consider this application at:

9:30 a.m., Wednesday, February 11, 2009

Building E, Room 201S
12100 Park 35 Circle
Austin, Texas

TYPE OF REQUEST: Lufkin, water Certificate of Convenience and Necessity (CCN) No. 10355, and Angelina WSC, water CCN No. 10359, provide retail water service in Angelina County, Texas. The City of Lufkin and Angelina WSC entered into an agreement regarding their respective water service areas pursuant to section 13.248 of the Texas Water Code. Under the agreement, Lufkin will transfer approximately 40.3 acres of its CCN area to Angelina WSC and Angelina WSC will transfer approximately 101.9 acres of its CCN area to Lufkin. There are no customers or facilities in the area being transferred. The Commissioners will consider whether to approve the agreement.

AUTHORITY: Texas Water Code Section 13.248; Title 30, Section 291.117 of the Texas Administrative Code.

INFORMATION: For information regarding the Agenda process, contact the TCEQ Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the TCEQ Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at this web site: www.tceq.state.tx.us.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the Agenda should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD), at least one week prior to the hearing.

Issued February 2, 2009